

in the
Supreme Court
of the
United States

Supreme Court, U. S.
E I L E D

OCT 19 1977

MICHAEL RODAK, JR., CLERK

OCTOBER TERM 1977

CASE NO. A-229 (77-363)

CITY OF MIAMI BEACH, a municipal corporation,
Petitioner

vs.

**BERNARD JACOBS, d/b/a THE PARK APART-
MENT HOTEL, RUTH SEWALL, d/b/a NASSAU
HOTEL, JOSEPH LIBBY, d/b/a CROYDON ARMS
APT., IRVING SCHOENFELD, d/b/a LINCOLN
PLAZA, STANLEY FRANKEL, d/b/a ALAMO
HOTEL, ISIDORE LEVINE, d/b/a LESLIE HOTEL,
AL FISHMAN, d/b/a COMMODORE HOTEL, MOR-
RIS STEINBERG, d/b/a MALABO APARTMENT, on
behalf of themselves and all others similarly situated,**
Respondents

**RESPONDENTS REPLY TO PETITION FOR A WRIT
OF CERTIORARI TO THE SUPREME COURT OF
THE STATE OF FLORIDA: TO THE THIRD
DISTRICT COURT OF APPEAL OF FLORIDA; AND
TO THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT OF THE STATE OF FLORIDA**

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THE STATE OF FLORIDA; TO THE THIRD
DISTRICT COURT OF APPEAL OF FLORIDA; AND
TO THE CIRCUIT COURT OF THE ELEVENTH
JUDICIAL CIRCUIT OF THE STATE OF FLORIDA

RESPONDENTS REPLY

The Petitioner, the CITY OF MIAMI BEACH, a municipal corporation, in the State of Florida, was the Defendant below, in the Circuit Court of the Eleventh Judicial Circuit.

The Respondents herein were the Plaintiffs below and were members of the "class" who paid and were assessed the "fire-line charges" against their respective properties.

REPORTS OF OPINIONS IN COURTS BELOW

The Order Denying Defendant's Motion To Dismiss, dated March 9, 1973, is unreported but appears in appendix hereto.

The Order of the Circuit Court on pleadings and setting cause for trial, dated May 31, 1973 is unreported but appears in appendix hereto.

The Final Decision of the Lower Court, dated April 8, 1974, is unreported but appears in the appendix hereto.

The Opinion of the District Court of Appeal, Third District, dated July 29, 1975 reported in 315 So.2d 227, copy of said Opinion is in the appendix hereto. (No further appeals were taken from said Opinion.)

The decision of the Lower Court, dated November 24, 1975 is unreported, but appears in the appendix hereto.

The Opinion of the District Court of Appeal, Third District, dated December 23, 1976, reported at 341 So.2d 236, appears in the appendix hereto.

OBJECTION TO STATEMENT OF GROUNDS OF JURISDICTION OF THE SUPREME COURT

The jurisdiction of the Supreme Court is claimed to be invoked under 28 U.S.C. Sec. 1257(3), which provides as follows:

“(3) By Writ of Certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State Statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where the title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.”

No such right or authority has been shown to this Honorable Court to justify this Court's jurisdiction under the above provision.

Rule 19-1(a) of the Rules of the Supreme Court also fail to justify this Honorable Court's jurisdiction of any federal question or substance.

THE ALLEGED CONSTITUTIONAL PROVISIONS INVOLVED

The Petitioner claims that the Due Process and Equal Protection clauses of the Fifth and Fourteenth Amendments to the United States Constitution is involved herein.

No such factual issues are involved herein that would justify the CITY in seeking Due Process and Equal Protection where the CITY has been the one who has refused to return the money exacted under a municipal ordinance which has been declared unconstitutional and the CITY has been fighting and delaying in returning the monies to the property owners who paid the illegal charges.

**DATES OF JUDGMENTS SOUGHT TO BE
REVIEWED AND TIME OF ENTRY**

1. The Judgment dated November 24, 1975, and entered January 5, 1976.
2. Opinion of District Court of Appeal, Third District dated December 23, 1976, and entered same date.
3. Opinion of the Florida Supreme Court dated May 31, 1977 and entered on the same date, which denied the Petition For Certiorari, without Opinion, and Petition For Rehearing denied July 29, 1977, without Opinion.

QUESTION PRESENTED FOR REVIEW

The Petitioner seeks to review the Florida Rules of Civil Procedure, Rule 1.220, governing Class Actions.

STATEMENT OF THE CASE

The Petitioner claims that the Respondents filed suit in equity in the Circuit Court of the Eleventh Judicial Circuit, In And For Dade County, Florida, to obtain a refund from the CITY of monies illegally collected by the CITY from them under the provisions of an ordinance imposing a "fire-line charge" against the owners of multiple-family residences and commercial buildings using City water service. The amount of people involved were the initial eight who filed the suit and others who subsequently joined the action, being Atlantic Associates, Inc., Murray Gold, Hilda Feinberg, Florence Lazik, Isadore Levine, White Properties, Inc., Whitehouse Apartment, Inc., White Hotel Corp., and Copacabana, Inc. The Whitehouse Properties, Whitehouse Apartment, Inc. and Whitehouse Corp., and Copacabana, Inc., were represented by other counsel, Broad & Cassel, who also were members of the Class.

By Order of the Circuit Court, dictated March 9, 1973, the Respondent CITY was ordered forthwith to notice each of the customers who paid the "fire-line charges". A copy of the form of notice required to be sent to the members of the Class was attached to said Order.

On May 31, 1973, the Petitioner, CITY, claiming:

"Great hardship in sending out the notices to all parties and desiring to be relieved of said obligation and requirements to send out notices to all of the parties who paid the 'fire-line tax'"

and the CITY waiving all previous requirements of notice, the CITY was relieved of said requirement by virtue of said Order of May 31, 1973.

On April 20, 1977, after the Orders of April 8, 1974 requiring the CITY to send out notices, the District Court of Appeal of Florida, Third District, affirmed said Order, reported at 315 So.2d 227.

Subsequently, the Court, on November 24, 1975, ordered the CITY to send out notices to all of the members of the "class". The CITY has refused to send out said notices. This Order of the Lower Court was affirmed by the District Court of Appeal, of Florida, Third District, and reported at 341 So.2d 236.

The Respondents herein have cited the Petitioner for Contempt for failure to send out the notices, as previously required and ordered, and has brought to the attention of the Court the Response To Interrogatories by the CITY, originally sent to the CITY on April 9, 1973, wherein the CITY responded to the following question:

"State the names, addresses, date and amounts paid by the customers who paid the "fire-line charges" to the City of Miami Beach, pursuant to Ordinance 1850 also known as Section 45-6(j). (attached list hereto)."

"A. Objection. The expense of obtaining this information would be prohibitive as well as oppressive. The City's computers are not capable of producing this information as requested."

On June 17, 1977, the Respondents herein again sought to secure the names and addresses and amounts paid and to have Petitioner, CITY, send out the notices to the members of the Class. The CITY has continuously, and still refuses to notify the members of the Class up to the present date.

This procedure is part of the dilatory and delaying tactics sought by the Petitioner-CITY, to delay the payment to the members of the Class of the monies due to them. The CITY hopes that eventually the parties will not be located or that eventually the parties will become deceased. But, the CITY has failed to recognize that the members of the Class also are the property owners who are also the parties whose properties were charged.

ARGUMENT

POINT INVOLVED

WHETHER THE SUPREME COURT OF THE UNITED STATES SHOULD ACCEPT JURISDICTION WHERE THE CITY ALONE HAS HAD THE INFORMATION AS TO THE NAMES AND ADDRESSES OF THE MEMBERS OF THE CLASS AND HAD BEEN ORDERED TO SEND OUT THE NOTICES TO THE MEMBERS OF THE CLASS BUT HAS CONTINUOUSLY REFUSED TO ABIDE BY THE ORDERS OF THE COURT, AND NOW SEEKS TO CLAIM A PROCEDURAL DUE PROCESS FOR THE FAILURE OF THE MEMBERS OF THE CLASS TO RECEIVE NOTICE IN CONNECTION WITH THE ASSESSMENT OF ATTORNEYS FEES.

The CITY has been using the delaying and stalling tactics since 1970 to prevent the members of the Class from receiving back the monies paid and charged against the properties of which they were the owners, for "fire-line charges" which have been declared unconstitutional by the Lower Courts.

The Order of May 31, 1973, affirmed by the Appellate Court, Third District Court of Appeal of Florida, on July 29, 1973, reported at 315 So.2d 227, required the CITY to send out the notices to the members of the Class. The CITY did not appeal said Order to the Supreme Court of Florida, and no further appeals were taken in connection with said Orders, which required the sending out the notices to the members of the Class.

The CITY, up to the present date, has wilfully refused to send out the notices to the members of the Class, but yet claims that procedural due process has been violated by the members of the Class not being notified in connection with the present litigation.

The Courts have continuously held that one cannot complain of his own wrongdoing and be the creator of the error and then complain that said error exists and therefore, should set aside the Orders lawfully entered. There were other members of the Class who were represented by independent counsel, to wit: Broad & Cassel, attorneys at law, in Miami Beach, Florida, who did not object to and were present at the time of the Hearing on the attorneys fees that were set by the Court. In addition, the CITY OF MIAMI BEACH was notified and if they were so concerned with the members of the Class and their rights thereunder, certainly, the CITY could have and should have adequately presented any counter-testimony to show that the amounts being sought for reasonable attorneys fee was improper or that said amount, as ultimately assessed, was an unreasonable fee. The CITY does not make any such contention. Although, the CITY recognizes that the CITY is not liable for the payment of the reasonable attorneys fee, but now claims that the CITY is the protector of the rights of these unknown parties who the CITY has refused to divulge to the members of the Class.

The CITY has been in bad faith since 1970 and continues to remain in that category, since no member of the Class has received the return of the monies which were directed to be repaid. The parties who were members of the Class at the time of the initiation of this proceeding still have not received back any of the payments and the CITY continues to hold the monies and refuses to return the same to the members of the Class.

The Courts have continuously held that Appellants must show that the enforcement of the judgment would deprive it, not another of the right arriving under a Federal Constitution. *Liberty Warehouse Company v. Busley Tobacco Growers Co-Op*, (Ky. 1928) 48 S.Ct.291; 276 U.S. 71; 72 L.Ed. 473.

The party invoking the jurisdiction of the Supreme Court must have a personal interest in the question and the Court has held that a state officer testing the Constitutionality of a state law solely in the interest of third persons has no standing to review the judgment, though a judgment for costs was rendered against him. *Smith v. Indiana*, (1903) 24 S.Ct. 51; 191 U.S. 138.

The Federal Supreme Court will not take jurisdiction of a Writ of Error to the Court which, absence of opinion by the Court below, makes it impossible to say whether its judgment could be sustained independent of the federal question. *Cuyahoga River Power Co. v. Northern Realty Co.*, (Ohio,1917) 37 S.Ct. 643.

The statement of the case reflects that the original Order of the Lower Court on May 31, 1973, and affirmed by the District Court of Appeal, of Florida, Third District, on July 29, 1975, reported at 315 So.2d 227, has never been appealed beyond the District Court of Appeal. No appeal was taken to the Florida Supreme Court. No appeal of said Order was taken to the United States Supreme Court. At that time, all issues concerning the notices that were involved in said decision were decided. It does appear now, that on the separate issue of notice, in connection with attorneys fees, notwithstanding that the CITY was ordered to send out notices concerning the decision and right of the members of the Class to receive back their money, the

CITY has refused and failed, wilfully, to send out said notices as required and ordered. The CITY now complains that because of the failure of the notices to the members of the Class that the decision should be reversed for lack of due process to the other members of the Class.

In the case of *Rio Grande Western Railroad Co. v. Stringham*, (Utah, 1950) 36 S.Ct. 5, 239 U.S. 44, 60 L.Ed. 136, the Court held that a decision of the State Supreme Court on a second appeal affirming the judgment on the ground that the former decision was the law of the case is not reviewable, where the federal opinion was involved in the first decision which was final.

The above case would appear to be controlling under the circumstances, since, in the first opinion the issue as to notice was clearly involved and had already been determined by the Court. The CITY was required, under said Opinion, to send out the notices to the Class. The CITY wilfully refused to send out said notices, although said Opinion was affirmed and became the law of the case.

The principal that the Supreme Court will decline to review Court Judgments which rest on independent and adequate grounds, even where those judgments also decide federal questions, applies not only in cases involving state substantive grounds but also in cases involving procedural grounds. *Henry v. State of Mississippi*, 85 S.Ct. 564, 379 U.S. 443, rehearing denied.

The Supreme Court of Mississippi, in the above case, had failed to respond with any Opinion. Where the highest Court of the State delivers no Opinion, and it appears that the Judgment might have rested upon a non-federal ground, the United States Supreme Court will not take jurisdiction

to review the Judgment. *Stembridge v. State of Georgia*, 72 S.Ct. 834, 343 U.S. 541.

The attorney for the CITY recognized the ability of the attorney for the Class and consented to said appointment by the Court.

CONCLUSION

It is respectfully urged upon this Court that the CITY has created the very problem upon which it presently objects by failing to abide by the Orders of the Lower Court to notice the members of the Class so that they could be advised of the pending Class litigation. Now that the CITY has received adverse rulings against the CITY and in favor of the members of the Class to receive back their monies, the CITY has now undertaken to "protect" the Class, by now assuming to represent the interest of the Class by contesting the right of the attorney to a reasonable attorney's fee.

The CITY, to this very day, still has refused to abide by the Orders of the Lower Court to send out and notice the members of the Class to the effect that they are entitled to the return of the monies which was wrongfully exacted from the members of the Class by the CITY.

It is respectfully urged unto this Court that this Honorable Court should not accept jurisdiction of this issue and deny the Petition For Writ of Certiorari.

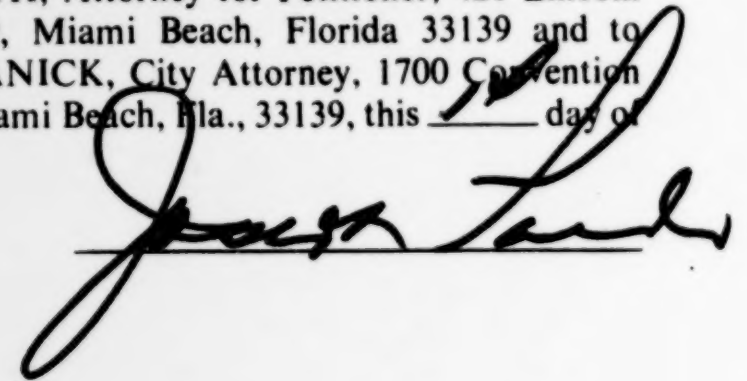
Respectfully submitted,

JOSEPH PARDO

Attorney for Respondents
Penthouse One, Roberts Bldg.
28 West Flagler Street
Miami, Florida 33130
Phone: (305) 371-0391

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Respondent's Reply to Petition For Writ of Certiorari and Appendix thereto has been served by mail upon BURNETT ROTH, Attorney for Petitioner, 420 Lincoln Road, Suite 329, Miami Beach, Florida 33139 and to JOSEPH A. WANICK, City Attorney, 1700 Convention Center Drive, Miami Beach, Fla., 33139, this 10 day of October, 1977.



Appendix

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL
CIRCUIT IN AND FOR DADE COUNTY, FLORIDA.

NO. 72-22041 (Judge Testa)

GENERAL JURISDICTION DIVISION

BERNARD JACOBS, d/b/a THE PARK APT. HOTEL,
et al.,

Plaintiff(s),

vs.

THE CITY OF MIAMI BEACH,
a municipal corporation,

Defendant.

PLAINTIFFS' INTERROGATORIES TO DEFENDANT

TO: THE CITY OF MIAMI BEACH, CITY AT-
TORNEY

1130 Washington Avenue
Miami Beach, Florida 33139

Pursuant to Rule 1.340 Florida Rules of Civil Procedure, the plaintiffs BERNARD JACOBS, d/b/a THE PART APT. HOTEL, et al., by and through their undersigned attorney, propounds the Interrogatories attached hereto and made a part hereof to the Defendant, THE CITY OF MIAMI BEACH, to answer same under oath, in writing, within the time and manner prescribed by law.

JOSEPH PARDO
JOSEPH PARDO
Attorney for Plaintiffs
19 West Flagler St.
Miami, Florida 33130

App. 1

I HEREBY CERTIFY that a true copy hereof, together with a copy of Interrogatories attached hereto and made a part hereof, was mailed to the addressee named herein this 20th day of March, 1973, together with the original Interrogatories, and a copy of Interrogatories was filed in Court.

JOSEPH PARDO
JOSEPH PARDO
OF COUNSEL

1. State your name, address and occupation and position with the CITY OF MIAMI BEACH.

A. Sheldon R. Zilbert, 1130 Washington Ave., Miami Beach, Fla. 33139, Attorney, Assistant City Attorney.

2. State the names, addresses, date and amounts paid by the customers who paid the "fire-line charges" to the CITY OF MIAMI BEACH, pursuant to Ordinance 1850, also known as Section 45-6(j). (Attach list hereto.)

A. Objection. The expense of obtaining this information would be prohibitive as well as oppressive. The City's computers are not capable of producing this information as requested.

3. Please state whether the CITY had the authority, in the event the water bill for the "fire-line charges" were not paid, to disconnect the water to said fire-line customers and to stop the flow of water through said water pipes.

A. Yes.

4. If the answer to the above is affirmative, please state the basis for the CITY'S authority.

A. Chapter 45 of the Code of the City of Miami Beach, Florida.

5. Please state whether the CITY, in addition to the regular water charges, sent by the City Water Department, had the authority to include the "fire-line charge" fee, with the additional demand that a 5% penalty per month, would be added if the fire-line customer did not pay within a specified period of time.

A. Yes.

6. If the answer to question 5 is affirmative, please state whether the CITY ever imposed, to any of its fire-line customers, the 5% penalty, per month, charge, pursuant to the above authority, and if imposed, state name, address and date and amount charged to said customers. (Attach list hereto if necessary.)

A. Yes, a 5% penalty was imposed. See Answer 2 above for remainder of this answer.

7. Please state whether Judge George E. Schulz, Circuit Judge, in the case of Mac-Ar-Mel, et al., as Plaintiffs, vs. The City of Miami Beach as Defendant, in Case Number 71-13460, declared Ordinance Number 1850, also known as §45-6(j) of the Miami Beach City Code, invalid, unreasonable, arbitrary, discriminatory, illegal and contrary to the laws of the State of Florida, and set said Ordinance aside.

A. This information is peculiarly within the knowledge of Joseph Pardo, Esquire.

8. Please state, if the above answer to number 7, is affirmative, the date that said Order was entered, by Judge Schulz, and whether the CITY took an Appeal from said Order.

A. Same as answer to question 7.

9. Please state whether the CITY paid any monies, or returned any monies to the fire-line customers, for "fire-line charges" since October, 1970.

A. No.

10. If the answer to number 9 is affirmative, state the name and address and amount paid or returned to the fire-line customer by the CITY. (Attach list hereto).

A. Not applicable.

11. Please state whether the CITY had a policy of refunding to the fire-line customers, the amounts paid by said customers for "fire-line charges" paid under protest by said customers.

A. No.

12. If answer to number 11 is affirmative, please state whether said policy was oral or in writing.

A. Not applicable.

13. If said policy was in writing, please state the date and form said policy was formulated and when it was enacted and who has a copy of said written policy. If the policy was oral, please state who formulated said policy and how said policy was transmitted to the department heads and was put into effect by the CITY.

A. Not applicable.

14. State whether the CITY had authority to place a lien against the real property, owned or operated by the customers who paid the fire-line charges or failed to pay the fire-line charges, in the event the customers failed or refused to pay the "fire-line charges" imposed by the CITY under Ordinance Number 1850, a/k/a §45-6(j).

A. Yes.

App. 4

15. Please state, if the answer to number 14 is affirmative, where the CITY obtained said authority and whether said authority was oral or written and who imposed said authority upon said fire-line customer.

A. Chapter 45 of the Code of the City of Miami Beach, Florida.

16. Please state whether the CITY ever threatened any of the fire-line customers to impose a lien upon the fire-line customer's property in the event that he failed to pay the charges imposed by the CITY for the "fire-line charges" under Ordinance Number 1850, a/k/a §45-6(j).

A. No.

STATE OF FLORIDA)

SS.

COUNTY OF DADE)

BEFORE ME, the undersigned authority, personally appeared, Sheldon R. Zilbert, Assistant City Attorney, an authorized representative of the CITY OF MIAMI BEACH, FLORIDA, being first duly sworn, under oath, states

THAT the answers given to the Interrogatories are true and correct to the best of his knowledge and belief. Dated this 9th day of April, 1973.

(illegible)

Notary Public, State of Florida at Large

NOTARY PUBLIC STATE OF FLORIDA AT LARGE

MY COMMISSION EXPIRES JAN. 31, 1977

BONDED THRU GENERAL INSURANCE

UNDERWRITERS

App. 5

I HEREBY CERTIFY that a true and correct original and copy of the foregoing PLAINTIFF'S INTERROGATORIES TO DEFENDANT and ANSWERS TO INTERROGATORIES was mailed this 9th day of April, 1973 to: JOSEPH PARDO, ESQUIRE, Attorney for Plaintiffs, 19 West Flagler Street, Miami, Florida, 33130 and a copy of Interrogatories with Answers was filed in Court.

JOSEPH A. WANICK, City Attorney
Attorney for Defendant
1130 Washington Avenue
Miami Beach, Florida 33139

By _____
Sheldon R. Zilbert
Assistant City Attorney

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL
CIRCUIT IN AND FOR DADE COUNTY, FLORIDA.

NO. 72-22041 (Judge Testa)

BERNARD JACOBS, d/b/a THE PARK APARTMENT HOTEL, RUTH SEWALL, d/b/a NASSAU HOTEL, JOSEPH LIBBY, d/b/a CROYDON ARMS APT., IRVING SCHOENFELD, d/b/a LINCOLN PLAZA, STANLEY FRAIBEL, d/b/a ALAMO HOTEL, ISIDORE LEVINE, d/b/a LESLIE HOTEL, AL FISHMAN, d/b/a COMMODORE HOTEL & MORRIS STEINBERG, d/b/a MALABO APARTMENT, etc., on behalf of themselves and all others similarly situated,

Plaintiffs,

vs,

THE CITY OF MIAMI BEACH,
a municipal corporation,

Defendant.

ORDER DENYING DEFENDANT'S MOTION TO DISMISS, MOTION FOR BETTER PARTICULARS AND MOTION TO STRIKE, AND DETERMINING CLASS AND ORDERING NOTICE TO CLASS

THIS MATTER coming on to be heard upon the Motion of the Defendant to Dismiss, Motion For Better Particulars, Motion To Strike and Motion for Determination of Class and Appointment of Attorney, and Notice To Class, and this Court having fully heard argument of counsel for the respective parties, it is upon due consideration:

ORDERED, ADJUDGED and DECREED as follows:

1. That this Court finds that the Plaintiffs have brought this action as a Class Action and that a joinder of all members of a Class would be impractical and that the same questions of law and fact are common through the entire Class and that claims for defenses of the representative parties are typical of the claims or defenses of the Class and that the representative parties are fairly and adequately represented in their interest in the Class.

2. That this Court has jurisdiction of the subject matter hereof and of the parties hereto.

3. That this Court designates the Plaintiff, BERNARD JACOBS, to be representative of the Class and the Class shall be all the customers of the CITY OF MIAMI BEACH, who paid the "fire-line charges" under Ordinance Number 1850 of the City of Miami Beach, Section 45-6(j), in the City Code of the City of Miami Beach, since October 1, 1970.

4. That this Court directs the CITY OF MIAMI BEACH to forthwith notice each of the customers who have paid "fire-line charges" to the CITY OF MIAMI BEACH, pursuant to Ordinance Number 1850, also known as Section 45-6(j), of the Code of the City of Miami Beach, in accordance with the form attached hereto and made a part hereof. That said customers shall have the right to object to being members of said Class by filing formal written notices of objection, with the Clerk of this Court, or may join the Class herein designated and appoint their own attorney or Plaintiffs' attorney to represent them. All customers, who paid the "fire-line charges", not objecting

in writing to being members of the Class, shall be considered as members of the Class.

5. That Defendant shall file its Answer to the Complaint within fifteen (15) days from the date hereof.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 9 day of March, 1973.

/s/ THOMAS A. TESTA
CIRCUIT JUDGE

[TITLE OMITTED]

**NOTICE TO CUSTOMERS OF THE CITY OF MIAMI
BEACH WHO HAVE PAID THE "FIRE-LINE
CHARGES"**

**TO: ALL INDIVIDUALS, PROPRIETORSHIPS,
PARTNERSHIPS, CORPORATIONS, AND ALL
OTHER BUSINESS FIRMS WHO HAVE PAID
FOR THE "FIRE-LINE CHARGES" SINCE OC-
TOBER 1, 1970 TO DATE, AS BILLED BY THE
CITY OF MIAMI BEACH FOR "FIRE-LINE
CHARGES" UNDER ORDINANCE NUMBER
1850, a/k/a SECTION 45-6 (j) OF THE CODE OF
THE CITY OF MIAMI BEACH.**

NOTICE IS HEREBY GIVEN that on or before twenty (20) days from the date hereof, that all customers of the CITY OF MIAMI BEACH, who have paid the "fire-line charges", since October 1, 1970 to date, shall be entitled to claim for a refund of said monies paid to the CITY OF MIAMI BEACH, and join in a Class Action filed herein, and in the event that written objection is not filed by said customer on or before twenty (20) days from the date hereof, then it will be determined that they approve the joining in the Class seeking the return of said "fire-line charges", paid by said customers to the CITY OF MIAMI BEACH.

IN THE EVENT that said customer desires to object to the return of said "fire-line charges" from the CITY OF MIAMI BEACH, then a written Notice shall be filed by said customer with the Clerk of the Circuit Court of the Eleventh Judicial Circuit, In And For Dade County, Florida, c/o Dade County Courthouse, Miami, Florida, on

or before twenty (20) days from the date hereof, and copy of said written Notice shall be sent to the office of the City Attorney, City of Miami Beach, 1130 Washington Avenue, Miami Beach, Florida 33139 and to Joseph Pardo, Attorney For Plaintiffs, Biscayne Building, 19 West Flagler Street, Miami, Florida 33130.

DATED the ____ day of March, 1973.

(TITLE OMITTED)

ORDER ON PLEADINGS AND SETTING CAUSE FOR TRIAL

THIS MATTER coming on to be heard upon Plaintiff's Motion To Strike Defendant's plea of laches, and the Defendant having raised, to this Court, that it would be a great hardship to send out the Notice to all of the parties, who had previously paid the fire-line tax, and the Defendant desiring to be relieved of said obligation and requirement to send out Notice to all of the parties who paid the fire-line tax, being the parties designated as the Class in this action, and the Defendant reserving the right to preserve for appeal the issue of whether this is an appropriate Class action, it is therefore upon consideration:

ORDERED, ADJUDGED and DECREED as follows:

1. The Defendant, THE CITY OF MIAMI BEACH, shall not be required to send written Notice to those persons who paid the fire-line taxes, and the Notice previously ordered is hereby cancelled and the CITY does herein waive all objections thereto.

2. That JOSEPH PARDO is hereby designated to act as attorney for the Class, hereinbefore designated, and shall represent the Class, except for those attorneys who represent other members of the Class who have filed their appearance in this cause.

3. That White Properties, Inc., a/k/a White Properties, N.V., a Netherlands Antilles Corporation, is hereby made a party plaintiff and joined as a member of the Class,

represented by Broad & Cassel, Attorneys at Law, and all future notices in this cause shall include notice to the above attorneys.

4. That Plaintiffs' Motion To Strike Defendant's Answer, as it pertains to the defense of laches, is hereby deferred until the time of trial.

5. That trial without jury is herein set before this Court, in Chambers, in the Dade County Courthouse, on August 28, 1973, at 1:30 P.M., and all parties are herein noticed to be prepared for trial.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 31 day of May, 1973.

s/THOMAS A. TESTA
CIRCUIT JUDGE

Copies sent to:

Joseph Pardo
Joseph Wanick, City Attorney
Broad & Cassel

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL
CIRCUIT IN AND FOR DADE COUNTY, FLORIDA.

GENERAL JURISDICTION

DIVISION

CASE NO. 72-22041 (Judge Testa)
Division No. 16

BERNARD JACOBS, et als.,
vs. Plaintiffs,

CITY OF MIAMI BEACH, a municipal corporation,
Defendant.

MOTION TO CITE DEFENDANT FOR CONTEMPT

COMES NOW the Plaintiffs, by and through their undersigned attorney, and moves this Court to Cite the Defendant herein for Contempt of this Court's Order and shows unto this Court the following:

1. That this case has been pending since the year 1972.
2. That on March 9, 1973, this Court ordered and directed the Defendant to send Notice to all the "fire-line charge" class members, together with the Notice attached thereto.
3. That at the behest of the Defendant and the agreement, the Court deferred and permitted the Defendant to be relieved of said requirement to furnish the names, ad-

resses, dates and amount paid by the customers who paid the "fire-line charges".

4. That on March 20, 1973, the Plaintiff asked the following interrogatory to the Defendant:

"State the names, addresses, dates and amounts paid by the customers who paid the "fire-line charges to the City of Miami Beach pursuant to Ordinance 1850 also known as Section 45-6(j). (Attach list hereto)."

The Defendant answered:

"A. Objection. The expenses of obtaining this information would be prohibitive as well as oppressive. The City's computers are not capable of producing this information as requested."

5. That the CITY, pursuant to Final Judgment of this Court, on April 8, 1974, required that the Defendant, CITY OF MIAMI BEACH, as follows:

"This Court directs the City of Miami Beach forthwith to send out written notices to each of the customers who have paid "fire-line charges" to the City of Miami Beach, pursuant to Ordinance Number 1850, also known as 45-6(j) of the City of Miami Beach Code of their right to the return of the money they paid in accordance with the form approved by Order of this Court on March 12, 1973."

"16. The City of Miami Beach shall furnish to the attorneys for the Plaintiffs the name and addresses of the customers who have paid the "fire-line charges" to the City of Miami Beach pursuant to Ordinance No. 1850, also known as 45-6(j) of the Code of the City of Miami Beach showing the amounts paid by each of the customers."

6. That by the Opinion of Judge Pearson, from the Appeal taken by the CITY OF MIAMI BEACH from said Order, appearing at 315 So.2d 227, the District Court of Appeal affirmed the Order of this Court in its entirety.

7. That no appeal was taken to the Supreme Court of Florida from said Order.

8. That on November 12, 1975, this Court entered its Order on Plaintiffs' Motion For The Entry of Order On Mandate, and awarding a reasonable attorney's fee, wherein the Court again directed the Defendant to furnish the names, addresses and amounts of the customers who paid the "fire-line charge" and also to furnish the lists of said customers to the attorney for the Plaintiffs. On March 2, 1977, the Plaintiffs again requested and moved the Defendants to furnish the names, addresses and amounts of the sums paid by the Class who paid the "fire-line charges", and although this Court had orally originally indicated that it would give to the CITY OF MIAMI BEACH 48 hours from the date of the entry of the Order to furnish said information and records, the Court amended said Order and granted the CITY 15 days from the date of the entry of the Order, on March 24, 1977.

9. That to date, no information nor lists have been furnished to the Plaintiffs as required by the Order of this Court. The Court further indicated to the CITY OF MIAMI BEACH, and its attorney, that it could secure a supersedeas stay order from the Appellate Court, otherwise, this Court indicated that it would hold THE CITY OF MIAMI BEACH responsible for carrying out the Orders of this Court.

10. That the CITY OF MIAMI BEACH, in order to further delay this matter, has taken an Appeal directly to the Supreme Court of Florida and has again attempted to delay this matter by requesting the Supreme Court to grant an extension for filing a record and brief and other matters necessary to perfect said Appeal, although the Plaintiffs herein seriously doubt the jurisdiction of the Supreme Court to take jurisdiction in this matter, when the matter had previously been ordered and affirmed by the District Court of Appeal, and no appeal was taken from said Order, and on Mandate, again the CITY OF MIAMI BEACH was directed to furnish the material, and it was again appealed to the District Court of Appeal, and said Order was affirmed. The only matter pending on Appeal to the Supreme Court of Florida is the question of the issue of the attorney's fee fund, and has nothing to do with the furnishing of the names, addresses and amounts required by Order of this Court.

It is clear that questions settled on an earlier Appeal would no longer be considered open to question on a subsequent appeal. *Dade County Classroom Teachers Association v. Rubin*, 238 So.2d, 284, certiorari denied, 91 S.Ct. 569.

WHEREFORE, Plaintiffs pray that this Court will cite the Defendant for contempt for its failure to abide by the Orders of this Court, there being no supersedeas bond either applied for nor provided to stay the effect of the prior judgments ordering the furnishing of the names, addresses and amounts.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Motion To Cite Defendant For Contempt was mailed to JOSEPH A. WANICK, City Attorney, City of Miami Beach, 1130 Washington Avenue, Miami Beach, Florida 33139, this 20th day of April, 1977.

JOSEPH PARDO

Attorney for Plaintiffs
Penthouse One, Roberts Building
28 West Flagler Street
Miami, Florida 33130
Phone: 371-0391

[TITLE OMITTED]

MOTION TO CITE DEFENDANT, CITY OF MIAMI BEACH FOR CONTEMPT FOR FAILURE TO SEND OUT NOTICES OR FURNISH NAMES; MOTION TO REQUIRE DEFENDANT, CITY OF MIAMI BEACH TO PLACE "FIRE-LINE" FUND IN THE REGISTRY OF THE COURT

COMES NOW THE Plaintiffs, by and through their undersigned attorney, and moves this Court to Cite the Defendant, CITY OF MIAMI BEACH, for Contempt in deliberately failing to send out Notices to those who paid the "fire-line" charges, and furnish a complete list of the names and addresses of those who paid the "fire-line" charges and shows unto this Court the following:

1. That by the Final Order of this Court, dated April 8, 1974, the CITY OF MIAMI BEACH was directed (in Paragraph 16) to furnish to the attorneys for the Plaintiffs, the names, and addresses of the customers who have paid "fire-line" charges to the CITY OF MIAMI BEACH.

2. That the CITY OF MIAMI BEACH was directed by this Court in that same Final Order to send out written notice to each of the customers who have paid the "fire-line" charges to the City, informing each of his/her right to the return of the monies they paid. This Court approved the notice form on March 12, 1973.

3. That the CITY OF MIAMI BEACH was directed to return to the members of the Class the monies paid by the members of the Class, which produced the "fire-line charge fund".

4. That this Court, in its Final Order on this cause found that "The City's position is untenable, to hold otherwise would be an open invitation for governing bodies to adopt fiscal bills of dubious validity and extract the tariff under duress of forfeiture and penalties while engaging in protracted litigation and then, when finally declared invalid, extend an apology and refuse to rebate."

"This Court can not lend any encouragement to this course of conduct which is a throw back to the dogma that 'the King can do no wrong'".

5. The CITY OF MIAMI BEACH, for the sole purpose of delay, has taken numerous appeals both to the District Court of Appeal of Florida, Third District, and to the Florida Supreme Court. In each case, as to the issues presented in this Motion, namely, the serving of notice, the furnishing of names and addresses to Plaintiff's attorney, and the very repayment of the "fire-line" charge, This Court has been affirmed.

6. That as to the issues presented in this Motion, not a single one is pending on appeal.

7. That the CITY OF MIAMI BEACH has failed to furnish to the attorneys for the Plaintiffs the names and addresses of the customer who have paid "fire-line" charges to the CITY OF MIAMI BEACH.

8. That the CITY OF MIAMI BEACH has failed to send out written notice to each of the customers who have paid the "fire-line" charges to the City, informing each of his/her right to the return of the monies they paid.

9. That, to date, the CITY OF MIAMI BEACH has

failed to return to the members of the Class the monies paid by the members of the Class.

10. That this Plaintiff is without other remedy than to move that this Court enforce its earlier Orders and protect this Plaintiff by taking charge of the monies involved.

WHEREFORE, Plaintiffs pray that this Court will cite the Defendant for contempt for its failures to abide by the Orders of this Court, and require the monies collected by the CITY OF MIAMI BEACH as a "fire-line" charge to be placed in the registry of this Court, there being no supersedeas bond either applied for nor provided to stay the effect of the prior judgments of this Court.

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Motion to Cite Defendant for Contempt for Failure to send out Notices or Furnish Names; and Motion to Require Defendant to place "fire-line" fund in the registry of the Court was mailed to JOSEPH A. WANICK, City Attorney, City of Miami Beach, 1130 Washington Avenue, Miami Beach, Florida, 33139 this 17 day of June 1977.

/S/ Joseph Pardo
JOSEPH PARDO
Attorney for Plaintiffs
Penthouse One, Roberts Building
28 West Flagler Street
Miami, Florida 33130
Phone: 371-0391

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL
CIRCUIT IN AND FOR DADE COUNTY, FLORIDA.

GENERAL JURISDICTION DIVISION

CASE NO. 72-22041
(Judge Testa)

BERNARD JACOBS, d/b/a THE PARK APART-
MENT HOTEL, RUTH SEWALL, d/b/a NASSAU
HOTEL, JOSEPH LIBBY, d/b/a CROYDON ARMS
ARPT., IRVING SCHOENFELD, d/b/a ALAMO
HOTEL, ISIDORE LEVINE, d/b/a LESLIE HOTEL,
AL FISHMAN, d/b/a COMMODORE HOTEL, &
MORRIS STEINBERG, d/b/a MALABO APART-
MENT, etc., on behalf of themselves and all others
similarly situated.

Plaintiffs,

vs

THE CITY OF MIAMI BEACH,
a municipal corporation,

Defendant.

AMENDED FINAL MEMORANDUM DECISION

THIS MATTER coming on to be heard before this
Court, based upon the Complaint filed by the Plaintiffs, in
behalf of themselves and all those similarly situated, for the
return of taxes paid by the Plaintiffs, in connection with a
"fire-line" charge, made pursuant to an ordinance enacted
by the CITY OF MIAMI BEACH, the Defendant filed its
Motion To Dismiss and Motion to Strike, which were
denied by this Court, and the Defendant generally denied

the allegations of the complaint, and this Court having fully
heard the testimony of the parties hereto, and having
received, in evidence, the exhibits filed, and having heard
extensive argument by the respective parties and their
counsel, Final Memorandum Decision and Motion for
Rehearing, this Court finds as follows:

1. By Order of March 9, 1973, this Court determined
the Class and ordered Notice to the Class as set forth
therein, to wit:

"The Class shall be all of the customers of the
City of Miami Beach, who paid the "fire-line
charges" under ordinance number 1850 of the
City of Miami Beach, §45-6(j) of the City Code of
the City of Miami Beach, since October 1, 1970."

2. The Petition For Rehearing, filed by the CITY OF
MIAMI BEACH, on March 20, 1973, was denied by Order
dated April 26, 1973.

3. By Order of May 31, 1973, the Plaintiffs and the
Defendant appeared before the Court and the defendant re-
quested the Court to relieve the Defendant of sending out
Notices to all of the parties who had paid the "Fire-line
tax" and the Defendant waived all previous requirements of
Notice and consented to the appointment of JOSEPH
PARDO as attorney for those in the Class not represented
by independent counsel, and this matter proceeded to be
noticed for trial.

4. The Defendant, THE CITY OF MIAMI
BEACH, has admitted and this Court finds that in addition
to the regular water charges sent by the City Water Depart-
ment, that there was included with the "fire-line" charge

fee, an additional demand that a five percent (5%) penalty per month was added if the "fire-line" customer did not pay within the specified period of time.

5. THE CITY OF MIAMI BEACH imposed a five percent (5%) penalty per month charge pursuant to authority granted under the ordinance.

6. This Court finds, from the evidence presented, that the Honorable George E. Schulz, Circuit Judge, in the case of *Mac-Ar-Mel, Inc., etc., et al., as Plaintiffs vs City of Miami Beach*, as Defendant, in Case Number 71-13460, In The Circuit Court of the Eleventh Judicial Circuit, declared Ordinance Number 1850 also known as 45-6(j) of the City of Miami Beach Code, unreasonable, arbitrary, discriminatory, illegal and contrary to the laws of the State of Florida, and set said Ordinance aside. It is singular that the City of Miami Beach did not see fit to appeal this decision.

This Court concurs in the Opinion of Judge Schulz and independently finds, from the evidence presented, that the Ordinance Number 1850, also known as §45-6(j) of the City of Miami Beach Code, is invalid, unreasonable, arbitrary, discriminatory, illegal and contrary to the laws of the State of Florida, and does herein also set said Ordinance aside, and of no force and effect.

7. THE CITY OF MIAMI BEACH has not returned any monies paid to it under the "fire-line" charges paid by the City of Miami Beach customers since October of 1970 to the present date.

8. THE CITY OF MIAMI BEACH had no policy of refunding to "fire-line" customers, the amounts paid by said customers for "fire-line" charges paid under protest by said customers.

9. THE CITY OF MIAMI had authority to place a lien against the real property owned or operated by the customers who pay the "fire-line" charges or who fail to pay the "fire-line" charges in the event the customers failed or refused to pay the "fire-line" charges imposed by the City of Miami Beach under Ordinance Number 1850 also known as Sec. 45-6(j).

10. This Court further finds that the issue of the validity of Ordinance Number 1850 also known as Sec 45-6(j) of the City of Miami Beach Code having been declared in a previous suit, supra, to be invalid, unreasonable, arbitrary and discriminatory, illegal and contrary to the laws of the State of Florida. The parties are estopped from litigating in this suit points and questions common to both causes of action and which were actually adjudicated in the prior litigation, and is further found to be res judicata. *Golden View Condominium, Inc. vs City of Hallandale*, 4th Dist. 1973, 279 So.2d 323, *City of Miami Beach vs Dor Rich Inc.*, 289 So.2d 52.

11. This Court further finds from the testimony presented the "fire-line" customers were paid under protest and are deemed by this Court to have been paid involuntarily.

12. This Court finds that there was actual and threatened exercise of power possessed by the City of Miami Beach and believed to be possessed by the party exacting or receiving the "fire-line" charges over the property of the Plaintiff's herein making the "fire-line" payments.

The principals governing recovery of payments made are applicable to the payments made in discharge of tax assessments. The modern tendency is towards a greater liberality in recognizing the implied duress under which

payment of a tax is almost always made, even when no seizure of the taxpayers goods are imminent if he is put at a serious disadvantage in the assertion of his legal rights in defending proceedings brought to collect the tax. Justice would require that he be at liberty to avoid this disadvantage by paying promptly and bringing suit to recover the amounts paid. In the case of *New Smyrna Inlet District vs. Esch, et al.* (Fla. 1931), 137 So. 1, the Supreme Court of Florida held that where the levy of an illegal tax may become a cloud upon title to real estate, the payment of the tax to avoid the cloud or to avoid the imposition of substantial burdens upon property rights of the owner, is not a voluntary payment. Further, in *St. Johns Electric Company vs. The City of St Augustine*, (Fla. 1921), 88 So. 387, the Supreme Court held that an ordinance proscribing a penalty by a fine for failure to pay the license taxes cannot fairly be said that the payment was voluntary, in the sense that its recovery is forbidden by a rule formulated by the Court even though the ordinance under which it was paid has been adjudicated to be invalid. Taxes are not voluntarily paid within the rule that precludes a recovery, where the failure to pay is a penal offense and payment is made to avoid proceedings to enforce the penalty. In the *City of Miami Beach vs Tenny*, (Fla., App.), 7 So.2d 136, the Court held that an action of the City in attempting to levy a special assessment against certain property owners, resulted in bringing those certain property owners into a stated "class" and the suit to enjoin collection to require the return of money which had been collected, for a tax not lawfully imposed, was proper. In the case of *Tenny vs. City of Miami Beach*, (Fla. App.), 11 So. 2d. 188, the Court reaffirmed the community of interest by the Plaintiffs, who paid an illegal tax and where their interest is one and the same.

In a recent decision the Second District Court of Appeals held that a citizen group may sue for and on behalf of some or all.

The opinion further expounded on "the avoidance of multiply action doctrine and stated that there were other considerations such as deterring economic influences flowing from the great expense of litigation and the precedential value of a prior decided case on a given point" The Court also alluded to the broadened language of the reworded "access to courts" provision in the 1968 version of Florida's Constitution. (*Save Sand Key Inc. vs. U.S. Steel Corp.*, 281 So.2d, 572 (2nd Fla. App., 1973).

1. This Court further finds and holds, as a matter of law, that the payment of the "fire-line" taxes to avoid the possibility of incurring a penalty which would accrue continually during a period of non-payment, is deemed to be made under duress. *Atchison T.N.S.F.R. Company vs. O'Connor*, 223 U.S. 280; *North Miami vs. Seaway Corp.*, (Fla.) 9 So. 2d 705.

14. The City's position is untenable, to hold otherwise would be an open invitation for governing bodies to adopt fiscal bills of dubious validity and extract the tariff under duress of forfeiture and penalties while engaging in protracted litigation and then, when finally declared invalid, extend an apology and refuse to rebate.

This Court can not lend any encouragement to this course of conduct which is a throw back to the dogma that "the King can do no wrong". One-eyed thinking of this kind is not in touch with present day realities.

Equitable principals dictate that the best interest of the

taxpayer will be served by the enactment of responsible tax measures and when found to be unlawful, then the City must respond and remit, otherwise it would be unconscionable for the City of be thusly enriched.

15. This Court directs that the CITY OF MIAMI BEACH forthwith send out written notice to each of the customers who have paid "fire-line" charges to the City of Miami Beach, pursuant to Ordinance No. 1850, also known as §45-6(j) of the City of Miami Beach Code, of their right to the return of the monies they paid in accordance with the form approved by Order of this Court on March 12, 1973.

16. The CITY OF MIAMI BEACH shall furnish to the attorneys for the plaintiffs, the names and addresses of the customers who have paid "fire-line" charges to the CITY OF MIAMI BEACH, pursuant to Ordinance Number 1850, also known as §45-6(j) of the Code of Miami Beach, showing the amount paid by each of the customers.

17. This Court retains jurisdiction over the subject of attorneys fees and the City will be afforded an opportunity to challenge representation by counsel.

18. This Court does herein assess the costs of these proceedings against the Defendant, CITY OF MIAMI BEACH, to be assessed by subsequent Order of this Court.

19. The Court holds that the issue of laches raised by the City is without foundation and dismisses same.

20. This Court retains jurisdiction for the purpose of enforcing the terms and conditions of this Final Judgment.

DONE AND ORDERED in Chambers, at Miami,
Dade County, Florida, this 8 day of April, 1974.

THOMAS A. TESTA
CIRCUIT JUDGE

IN THE DISTRICT COURT OF APPEAL OF
FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 1975

CASE NO. 74-667

CITY OF MIAMI BEACH, a municipal corporation,
Appellant,

vs.

BERNARD JACOBS, et al.,
Appellees.

Opinion filed July 29, 1975.

An Appeal from the Circuit Court for Dade County,
Thomas A. Testa, Judge.

Joseph A. Wanick, City Attorney, for appellant.

Broad & Cassel; Joseph Pardo, for appellees.

Before BARKDULL, C.J., and PEARSON and
HENRY, JJ

REVISED OPINION

PEARSON, Judge.

The City of Miami Beach appeals a final judgment in a class action suit¹ which ordered the repayment to the class of money paid by the members of the class to the City under an ordinance which imposed [copy illegible] and charges to be known as "fire line charges." The ordinance had been declared unconstitutional in a prior suit in the same court by a different judge. The present trial judge concurred in that decision and found (1) that the plaintiffs represented a proper class, and (2) that because the invalid ordinance carried penalties for nonpayment of the periodic charges, the payments made of the charges must be considered as "payment under protest."

The City presents three points, as follows: (1) it was error to find this to be a proper class suit; (2) it was error to find the ordinance invalid; and (3) the trial judge erred in failing to find for the City upon its defense of laches. We hold that no reversible error is shown.

The finding of the trial judge that this was a proper class suit is supported by the holdings in the following cases: *City of Miami Beach v. Tenney*, 150 Fla. 241, 7 So.2d 136 (1942); *Watnick v. Florida Commercial Banks, Inc.*, Fla.App. 1973, 275 So.2d 278; *Port Royal, Inc. v. Conboy*, Fla.App. 1963, 154 So.2d 734.

In the City's argument directed to the trial court's finding that the ordinance is invalid, it is urged that the trial

¹The class shall be all of the customers of the City of Miami Beach Beach, who paid the 'fire-line charges' under ordinance number 1850 of the City of Miami Beach, § 45-6(j) of the City Code of the City of Miami Beach, since October 1, 1970."

judge acted entirely upon the prior determination of another judge in another case in the same court. This argument is refuted by the specific findings contained in the judgment. The judge pointed out:

"This Court concurs in the Opinion of Judge Schulz and independently finds, from the evidence presented, that the Ordinance Number 1850, also known as §45-6(j) of the City of Miami Beach Code, is invalid, unreasonable, arbitrary, discriminatory, illegal and contrary to the laws of the State of Florida, and does herein also set said Ordinance aside, and of no force and effect."

There remains on this point only the determination of whether there was sufficient competent evidence to support the finding. We find that the ordinance is invalid on its face and that, therefore, there was no need for special evidence on this issue. We are here dealing with an ordinance proposing to levy upon certain properties a monthly charge if the properties' fire lines exceeded stated sizes. This charge was not a charge for use but simply for the right to be connected into the City water system. The ordinance makes no attempt to earmark the funds for the purpose of financing an expansion of the system or for increased costs of any kind. It establishes a bare charge without relation to use or a legally collectable connection fee. See *City of Dunedin v. Contractors & Builders Ass'n.*, Fla.App. 1975, 312 So.2d 763. See also cases cited at 84 C.J.S. Taxation § 22b (1954) and 31 Fla. Jur. Taxation § 62 et seq.

It is true, as the City urges, that a trial judge is not bound by another trial judge's declaration of unconstitutionality of an ordinance in the judgment of another case. But in view of the above-quoted finding of the present

trial judge, which was made independently and which is supported in the record, we will affirm.

The City's contention, under its third point, that it was entitled to a judgment as a matter of law because of the laches of the plaintiffs is not supportable on this record. See *Tampa Water Works Co. v. Wood*, 104 Fla. 306, 139 So. 800 (1932).

Affirmed.

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL
CIRCUIT IN AND FOR DADE COUNTY, FLORIDA.

GENERAL JURISDICTION DIVISION

NO. 72-22041 (Judge Testa)

BERNARD JACOBS, et als.,

Plaintiff,

vs.

CITY OF MIAMI BEACH, a municipal corporation,
Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION FOR
THE ENTRY OF ORDER ON MANDATE AND
AWARDING A REASONABLE ATTORNEY'S FEE**

THIS MATTER coming on to be heard after due notice, upon the Plaintiff's Motion To The Entry Of An Order Pursuant To the Mandate of the District Court of Appeal, Third District, revised Opinion, dated July 29, 1975 (315 So.2d 227), and for the determination of a reasonable attorney's fee to be paid to JOSEPH PARDO, attorney, representing the Class who paid the "fire-line charges", and this Court having heard the testimony of the attorney and the expert testimony to support said Motion and determination as to a reasonable attorney's fee, and having considered the various elements necessary in computing a reasonable attorney's fee as set forth in 32 F.S.A. Code of Professional Responsibility, Canon 2 (D.R.2-106 (b)) and this Court being personally familiar with the work performed by Joseph Pardo, as attorney for the Class in this cause, it is upon due consideration:

ORDERED, ADJUDGED and DECREED that the Defendant, CITY OF MIAMI BEACH, shall pay to JOSEPH PARDO, as attorney representing the Class who paid the "fire-line charges" to the CITY OF MIAMI BEACH, as a reasonable attorney's fee for said representation, an amount equal to THIRTY-SEVEN PERCENT (37%) of the sum of monies collected by the CITY OF MIAMI BEACH from the Class who paid the "fire-line charges", which sum shall include interest at SIX PERCENT (6%) per annum from the date of the entry of this Court's Amended Final Decision, dated April 8, 1974, until paid, pursuant to F.S.A. §55.03, and said sums shall be paid forthwith, and it is further

ORDERED, ADJUDGED and DECREED that the CITY OF MIAMI BEACH shall refund to each of the members of the Class who paid to the [copy illegible] paid by said members of the Class, together with interest, as aforesaid, less the amount of THIRTY-SEVEN PERCENT (37%) hereinbefore awarded to JOSEPH PARDO, as a reasonable attorney's fee, for representing said Class, and said sums shall be paid forthwith, and it is further:

ORDERED, ADJUDGED and DECREED that the CITY OF MIAMI BEACH shall, within 30 days from the date hereof, furnish to JOSEPH PARDO, as attorney for the Class, the names, addresses and amounts paid by the customers of the Class who paid the "fire-line charges" to the CITY OF MIAMI BEACH, (see paragraph 16 of this Court's Final Decision, dated April 8, 1974), and the CITY OF MIAMI BEACH shall permit JOSEPH PARDO, or his authorized representative, to inspect and verify and copy the names addresses and amounts of the figures and information furnished by the CITY OF MIAMI BEACH, and it is further:

ORDERED, ADJUDGED and DECREED that this Court retains jurisdiction for the purpose of enforcing the terms and conditions of this Order and for the entry of such other and further Orders as may be necessary to implement the enforcement of this Court's Decree.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 24 day of November, 1975.

THOMAS A. TESTA
CIRCUIT COURT

Proposed Order mailed 11/14/75 to: Broad & Cassel & Joseph A. Wanick
Conformed Copies To:
Joseph Pardo, Esq.
Joseph A. Wanick, Esq.
Broad & Cassel, Esqs.

[TITLE OMITTED]

MOTION TO REQUIRE DEFENDANT, CITY OF MIAMI BEACH TO PLACE "FIRE-LINE" FUND IN THE REGISTRY OF THE COURT AND OTHER RELIEF

COMES NOW the Plaintiffs, by and through their undersigned attorney, and moves this Court To Require the CITY OF MIAMI BEACH to Place the "Fire-Line Charge" Fund Into The Registry of This Court, and further require the CITY OF MIAMI BEACH to furnish the names, addresses and amounts paid by the members of the Class who paid the "fire-line charges" and shows unto this Court the following:

1. That this matter has been in litigation since 1972.
2. That the CITY has continuously failed to furnish the names, addresses and amounts paid by the members of the Class notwithstanding the request for admissions and the answers to interrogatories previously filed.
3. That the CITY OF MIAMI BEACH, by the Final Order of this Court, of April 8, 1974, was directed by paragraph 16 to furnish the names, addresses and amounts paid by the members of the Class to the attorney for the Class, Joseph Pardo. To date, none of this information has been furnished to Joseph Pardo.
4. That the CITY was directed to refund to the members of the Class the monies paid by the members of the Class, which produced the "fire-line charge" fund.
5. That by previous Order of this Court, of April 8,

1974, the Orders of this Court has been affirmed by the 3d. D.C.A., Opinion filed July 29, 1975, as it appears at 315 So.2d 227, which affirmed the Orders of this Court as above set forth.

6. That to date, the CITY has failed to refund to any of the members of the Class any of the monies paid, nor has the CITY placed said funds into the registry of this Court for the benefit of the members of the Class, nor has the CITY furnished names and addresses and amounts paid by the members of the Class, nor furnished to the attorney for the Class, Joseph Pardo, the information so directed.

7. That this further delay will be of great detriment and harm to the members of the Class in that time expended by the CITY in the continuous delaying tactics will make it more difficult to locate the members of the Class or to contact the members of the Class when this matter has been completely resolved. That none of the matters presently pending involve any of the issues and requests herein made and would not in any way delay or hinder the rights of the CITY in its present pending matters, but will be of detriment and harm to the members of the Class if not granted.

WHEREFORE, the Plaintiff prays that this Court, in Equity, will grant the foregoing Motion and require the CITY OF MIAMI BEACH to place the "fire-line charge" fund into the registry of this Court for the protection and benefit of the members of the Class already determined to be entitled to the return of said monies from the CITY and who have already paid said "fire-line charge" and to further require the CITY OF MIAMI BEACH, pursuant to the previous Orders of this Court, affirmed by the Appellate Court, to forthwith furnish the names, addresses and

amounts paid by the members of the Class who paid the "fire-line charges".

I HEREBY CERTIFY that a true and correct copy of the above Motion To Require Defendant, City of Miami Beach, To Place The "Fire-Line" Fund In The Registry of the Court And Other Relief was mailed to JOSEPH A. WANICK, City Attorney, City of Miami Beach, 1130 Washington Avenue, Miami, Beach, Florida 33139, and to BROAD & CASSELL, 1108 Kane Concourse, Bay Harbor Islands, Florida 33154 this 2nd day of March, 1977.

/s/Joseph Pardo

JOSEPH PARDO

Attorney for Plaintiff, Class
Penthouse One, Roberts Building
28 West Flagler Street
Miami, Florida 33130
Phone: 371-0391

[TITLE OMITTED]

ORDER REQUIRING PRODUCTION

THIS MATTER coming on to be heard upon Plaintiffs' Motion To Require The Defendant, CITY OF MIAMI BEACH, to Produce the Names, Addresses and Amounts Paid by the Members of the Class Who Paid the Fire-Line Charges, And to Have The "FIRE-LINE FUND" Placed in the Registry of this Court, and this Court having previously directed the production of the names, addresses and amounts paid by the members of the Class, of the "Fire-Line Charges" and said Orders having previously been appealed and affirmed by the District Court of Appeal, Third District, and it appearing to this Court that to date, none of the names, addresses and amounts paid by the members of the Class have been furnished to the attorney for the Class, Joseph Pardo, as previously directed, it is upon due consideration:

ORDERED and ADJUDGED that the Defendant, CITY OF MIAMI BEACH, shall furnish to Joseph Pardo, Attorney for the Class, the names, addresses and amounts paid by the Members of the Class who paid the "Fire-Line Charges", within fifteen (15) days from the date of the entry of this Order, and shall permit the attorney for the class, Joseph Pardo, or his duly designated representative to inspect and verify the records of the CITY OF MIAMI BEACH the information furnished, and it is further:

ORDERED and ADJUDGED that the CITY OF MIAMI BEACH shall send out to all of those who paid the "Fire-Line Charges" being members of the Class, in accordance with the attached Notice, previously approved by this Court, by previous Order, which notice shall be sent out at

the same time that the CITY OF MIAMI BEACH sends out its regular monthly water bills notice, and it is further:

ORDERED AND ADJUDGED that this Court reserves ruling on the Plaintiffs Motion To Require THE CITY OF MIAMI BEACH to place the "Fire-Line Fund" in the registry of the Court.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 24 day of March, 1977.

THOMAS A. TESTA
CIRCUIT JUDGE

Conformed Copies To:

Joseph Wanick, City Attorney, City of Miami Beach
Broad & Cassell, Esqs.
Joseph Pardo, Esq.

IN THE CIRCUIT COURT OF THE 11TH JUDICIAL
CIRCUIT IN AND FOR DADE COUNTY, FLORIDA.

NO. 72-22041 (Judge Testa)

Division No. 16

GENERAL JURISDICTION DIVISION

BERNARD JACOBS, d/b/a THE PARK APART-
MENT HOTEL, RUTH SEWALL, d/b/a NASSAU
HOTEL, JOSEPH LIBBY, d/b/a CROYDON ARMS
APT., IRVING SCHOENFELD, d/b/a LINCOLN
PLAZA, STANLEY FRAIBEL, d/b/a ALAMO
HOTEL, ISIDORE LEVINE, d/b/a LESLIE HOTEL,
AL FISHMAN, d/b/a COMMODORE HOTEL &
MORRIS STEINBERG, d/b/a MALABO APART-
MENT, etc., on behalf of themselves and all others
similarly situated.

Plaintiffs,

vs,

THE CITY OF MIAMI BEACH,
a municipal corporation,

Defendant.

**NOTICE TO CUSTOMERS OF THE CITY OF MIAMI
BEACH WHO HAVE PAID THE "FIRE-LINE
CHARGES"**

TO: ALL INDIVIDUALS, PROPRIETORSHIPS,
PARTNERSHIPS, CORPORATIONS, AND ALL
OTHER BUSINESS FIRMS WHO HAVE PAID
FOR THE "FIRE-LINE CHARGES" SINCE OC-

TOBER 1, 1970 TO DATE, AS BILLED BY THE
CITY OF MIAMI BEACH FOR "FIRE-LINE
CHARGES" UNDER ORDINANCE NUMBER
1850, a/k/a SECTION 45-6 (j) OF THE CODE OF
THE CITY OF MIAMI BEACH.

NOTICE IS HEREBY GIVEN that on or before
twenty (20) days from the date hereof, that all customers of
the CITY OF MIAMI BEACH, who have paid the "fire-
line charges", since October 1, 1970 to date, shall be en-
titled to claim for a refund of said monies paid to the CITY
OF MIAMI BEACH, and join in a Class Action filed
herein, and in the event that written objection is not filed by
said customer on or before twenty (20) days from the date
hereof, then it will be determined that they approve the join-
ing in the Class seeking the return of said "fire-line
charges", paid by said customers to the CITY OF MIAMI
BEACH.

IN THE EVENT that said customer desires to object
to the return of said "fire-line charges" from the CITY OF
MIAMI BEACH, then a written Notice shall be filed by
said customer with the Clerk of the Circuit Court of the
Eleventh Judicial Circuit, In And For Dade County,
Florida, c/o Dade County, Courthouse, Miami, Florida, on
or before twenty (20) days from the date hereof, and copy of
said written Notice shall be sent to the office of the City At-
torney, City of Miami Beach, 1130 Washington Avenue,
Miami Beach, Florida 33139 and to Joseph Pardo, At-
torney for Plaintiffs, Penthouse One, Roberts Building, 28
West Flagler Street, Miami, Florida 33130.

DATED the ____ day of March, 1977.

IN THE SUPREME COURT OF FLORIDA

FRIDAY, JULY 29, 1977

CASE NO. 50,973

CITY OF MIAMI BEACH, ETC.,

Petitioner,

vs.

BERNARD JACOBS, ET AL.,

Respondents.

Petitioner's Petition for Rehearing is hereby denied,
and it is further

ORDERED that the Petition for Stay of Mandate
filed by petitioner is hereby granted and proceedings in this
Court and in the District Court of Appeal, Third District,
and in the Circuit Court in and for Dade County, Florida,
are hereby stayed to and including August 29, 1977 to allow
petitioner to seek review in the Supreme Court of the
United States and obtain any further stay from that Court.

A True Copy

TEST:

/s/SID J. WHITE

Sid J. White

Clerk Supreme Court.

y
CC: Clerk, DCA 3
Clerk Circuit Court
Hon. Thomas A. Testa, Judge
Hon. Joseph A. Wanick
Hon. Joseph Pardo
Broad & Cassel

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

September 9, 1977

Burnett Roth, Esquire
420 Lincoln Road
Suite 329
Miami Beach, Florida 33139

Re: City of Miami Beach v. Bernard Jacobs, etc., et
al., A-229 (77-363)

Dear Mr. Roth:

Your application for stay in the above-entitled case has
been presented to Mr. Justice Powell, who has endorsed
thereon the following:

"Denied
L.F.P.
9/8/77"

Very truly yours,

MICHAEL RODAK, JR., Clerk

By

Peter K. Beck
Assistant Clerk

th

cc: Joseph Pardo, Esquire
Penthouse One
Roberts Building
28 West Flagler Street
Miami, Florida 33130